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No. 82-5046

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

OWEN W. CRUMPACKER,
*Appellant,*

V.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION,
*Appellee.*

## ON APPEAL FROM THE SUPREME COURT OF INDIANA

## MOTION TO DISMISS OR AFFIRM

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The Appellee respectfully moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Indiana on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

## OPINIONS BELOW

The decision and opinion giving rise to Appellant's appeal was made and entered by the Supreme Court of Indiana on February 11, 1982. *In The Matter of Owen W. Crumpacker*, ____ Ind. ____, 431 N.E. 2d 91 (1982). Said decision found Appellant in indirect contempt of court for continuing to practice law in the State of Indiana after an order of disbarment had been entered by the Supreme Court of Indiana. *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36, cert. denied, 444 U.S. 979, 100 S.Ct. 481 (1978). Said order of disbarment was entered on November 29, 1979. Said decision also found the Appellant in direct contempt of court.

Previously, Appellant herein filed a *Petition For A Writ of Certiorari to the Supreme Court of Indiana*, challenging the constitutionality of the order of disbarment. On December 3, 1979, the *Petition For Writ of Certiorari* was denied. On January 23, 1981, the Indiana Supreme Court Disciplinary Commission filed its *Verified Information For Contempt And Petition For Order to Show Cause* against Appellant, alleging that Appellant continued to practice law in defiance of the order of disbarment. On February 10, 1981, *The Order To Show Cause* was issued and, thereafter, beginning on June 29, 1981, after many continuances granted on behalf of Appellant, the matter was heard.

## JURISDICTION

Appellee does not agree with Appellant's statement of the grounds on which the jurisdiction of the Court is invoked. Appellee concedes that the Supreme Court of the United States has jurisdiction of this matter.

## STATUTES INVOLVED

The Appellant has fairly summarized those provisions of the various constitutional provisions, statutes and court

rules he claims to have application to the questions presented.

## QUESTIONS PRESENTED

The Appellee will respond below in its Statement of the case to each of the eight (8) questions presented by Appellant.

## STATEMENT OF THE CASE

Appellant's "Statement of the Case" appears on pp. 16-32, inclusive, of his Jurisdictional Statement. A substantial part of Appellant's Statement is mere argument and surplusage. Some of Appellant's Statement is erroneous. For example, it is erroneous that the Supreme Court of Indiana "instituted and prosecuted criminal proceedings against a private citizen...". The record shows that the contempt proceeding was initiated by the filing of a *Verified Information For Contempt and Petition To Show Cause* by the Indiana Supreme Court Disciplinary Commission and that said proceeding was prosecuted by the same. For additional example, Appellant's Statement is erroneous and misleading where he asserts that "The Supreme Court of Indiana, for the first time in any recorded decision, has organized itself into a trial court to charge, try, and convict appellant...of the statutory crimes of both direct and indirect criminal contempt". See, e.g., *In The Matter of Biagio J. Perrello*, ___ Ind. ___, 386 N.E. 2d 174 (1979).

A major part of Appellant's Statement is immaterial and irrelevant to the contempt proceeding, which is the subject of this appeal. For example, Appellant attempts to relitigate his disbarment, continuously referring to the Court's order and decision as "the 27 page disciplinary action" and as being "void". The record shows that the Appellant was disbarred by order of the Supreme Court of Indiana and that said order was left undisturbed by this

Court. *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36, cert. denied 100 S.Ct. 481, 444 U.S. 979, 61 L Ed. 2d 406 (1978).

The Appellant, Owen W. Crumpacker, was disbarred by order of the Supreme Court of Indiana on November 29, 1978. Thereafter, Appellant continued to practice law in the State of Indiana in defiance of said order of disbarment. On February 11, 1982, the Supreme Court of Indiana entered its opinion and order finding Appellant to be in contempt of court for his defiance of the 1978 order of disbarment. *In The Matter of Owen W. Crumpacker*, ____ Ind. ____, 431 N.E 2d 91 (1982).

## ARGUMENT

The Appellant first asserts that Burns Indiana Statutes Annotated, Code Edition, 33-2-1-4 (4-110) is violative of the IV, V, VI, VIII, and XIV Amendments to the United States Constitution. Appellant fails to discuss this assertion in context of the contempt proceeding. Instead, Appellant attempts to discuss and relitigate the Supreme Court of Indiana's order of disbarment. As said order has been determined to be final by the Supreme Court of Indiana, and, as the United States Supreme Court declined its opportunity to review said order, Appellant's discussion is immaterial and moot. *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36 (1978). Appellant fails to raise a substantial federal question by his first assertion.

The Appellant next asserts, by Question 2, that the Supreme Court of Indiana does not have jurisdiction "to institute, prosecute, and convict a private citizen of the statutory crimes of direct and indirect criminal contempt". This question is not presented by the record below. The record of the case below demonstrates that the Supreme Court of Indiana did not institute or prosecute the contempt proceeding. The record of the case below demonstrates that the Indiana Supreme Court Disciplinary Commission

instituted and prosecuted the contempt proceeding before the Supreme Court of Indiana. Appellant fails to raise a substantial federal question by the second question presented on appeal.

The Appellant argues, by Question 3, that the "void character" of the disbarment order may be urged as a defense in a prosecution for alleged contempt for violating that order. This question is not presented by the record below. The Supreme Court of Indiana disbarred Appellant on November 29, 1978, *In Re Crumpacker*, 269 Ind. 630, 383 N.E. 2d 36 (1978). On December 3, 1979, the United States Supreme Court denied Appellant's *Petition For Writ of Certiorari*, thereby declining its opportunity to review the disbarment order. It is an established fact that Appellant was disbarred as an attorney in the State of Indiana. Appellant fails to raise a substantial federal question by the third question presented by appeal.

Appellant next raises the issue, by Question 4, as to whether the Supreme Court of Indiana can act "as judge of criminal charges filed and prosecuted by it". As discussed above, this question is not presented by the record below. The record below demonstrates that the Indiana Supreme Court Disciplinary Commission instituted and prosecuted the contempt proceeding before the Supreme Court of Indiana. Furthermore, under Indiana law, a finding of contempt is not a criminal conviction. *State v. Shumaker*, 200 Ind. 716, 161 N.E. 408 (1923), cited with approval, *Owen W. Crumpacker v. Donald L. Hudkins*, No. TH82-60-C, slip op. at 2 (s.d. Ind. July 12, 1982). Appellant has failed to raise a substantial federal question by the fourth question presented by appeal.

Appellant asserts, by Question 5, that the Supreme Court of Indiana was obliged to afford Appellant compulsory process for obtaining witnesses in his favor. There is nothing in the record below indicating that such a request was made by Appellant and denied by said court. Appellant has failed, with respect to this issue, to indicate

with specificity the state in the proceedings at which Appellant raised said issue and, as such, has not complied with Supreme Court Rule 15 (1)(b). Appellant has failed to raise a substantial federal question by this issue.

Appellant asserts by Question 5, that the Supreme Court of Indiana was obliged to grant his request for continuance where his counsel had withdrawn from the case five (5) days prior to the trial. It is a well-settled rule of law that a trial judge has a large measure of discretion in determining whether or not a continuance will be granted. It is an equally accepted rule of law that this discretion is fully recognized in a situation like the one at hand where the continuance was requested because the defendant's counsel had withdrawn from the case. See, e.g., *Ungar v. Sarafite*, 376 U.S. 575, 11 L Ed 2d 921, 84 S.Ct. 841 (1964), *Gray v. U.S.* 14 F 2d 366 (1926), *U. S. v. Rosenstein*, 34 F 2d 630 (1929), *Hartsfield v. State of Indiana*, 228 Ind. 616, 94 N.E. 2d 453 (1950). In *Ungar v. Sarafite*, 376 U.S. 575, 11 L Ed 2d 921, 84 S.Ct. 841 (1964), the United States Supreme Court stated the above rule as follows:

> "The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party fails to offer evidence or is compelled to defend without counsel. (cite omitted)... There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances presented to the trial judge at the time the request is denied."

Further, this Court has stated that "absent a clear abuse of discretion from which prejudice results", the trial court's discretion will not be disturbed on appeal, *U.S. v. Carter*, 453 F 2d 402, (6th Cir. 1971).

The Supreme Court of Indiana sat as a trial court in the contempt proceeding of Appellant. The circumstances presented to the Court at the time Appellant's Request For

Continuance was denied are as follows: "The Order to Show Cause was issued on February 10, 1981; thereafter, several hearing dates were scheduled, but on each occasion continued at the request of Respondent or his counsel of record, John Lyons". *In The Matter of Owen W. Crumpacker* (supra), 431 N.E. 2d at 91. On June 22, 1981, Mr. Lyons, Appellant's attorney, filed a Motion For Leave To Withdraw with the court showing the court that he had made "serious and numerous efforts to meaningfully communicate with the Respondent over the past several months, which efforts have been fruitless" and that "on the 28th day of May, 1981 he communicated by mail with the Respondent announcing his intention of withdrawing his appearance and citing the reasons therefore and further inviting some communication from the Respondent or reaction, which letter evoked no communication or reaction". On June 22, 1981, said Motion For Leave to Withdraw was granted. Additionally, it is abundantly clear from the record that Appellant and Mr. Lyons did not share the typical attorney-client relationship; Appellant had failed to heed the advice of his counsel, Appellant had engaged in the preparation of the trial without the assistance of counsel. Appellant and Lyons have had such an "on again-off again" relationship in this disbarment matter since 1975. Appellant cannot show, in light of these circumstances, that the Court's action in not granting a continuance resulted in prejudice to Appellant. Further, Appellant knew of Lyons' intention to withdraw his appearance approximately one (1) month before such withdrawal was made and, yet, made no attempt during that time to contact either Mr. Lyons or other counsel. Appellant's request for a continuance was done for no ligitimate reason and in an effort to delay the proceedings unnecessarily. The Appellant has failed to raise a substantial federal question by the fifth question presented by appeal.

Appellant asserts, by Question 6, that the denial of his written request for oral argument deprived him of his right under the 6th Amendment to the United States Constitution. The record below indicates that Appellant, after making a narrative statement covering some 83 pages in the transcript, rested his case without reserving the right to make closing argument. The Supreme Court of Indiana thereupon directed both sides to file written findings of fact. The Appellant thereafter filed his findings of fact and requested an oral argument as to the "special findings". Appellant cites *Herring v. New York*, 422 U.S. 852, 95 Supreme Ct. 2550 (1975), as the controlling authority for his position. *Herring* stands for the proposition that in a criminl trial defense counsel has a constitutional right to make closing argument. Appellant had no such "right" in this instance, among other reasons, because the contempt proceeding was not criminal in nature *(State v. Shumaker, supra)* and because Appellant had fully and at length addressed the Court in the form of final argument in his narrative testimony. Appellant has failed to raise a substantial federal question by the 6th Question presented by appeal.

Appellant asserts, by Question 7, that the order of disbarment was of a "vague and indefinite character". There is nothing vague and indefinite about the order of disbarment. Appellant has never before exhibited a lack of understanding as to the meaning of the order. Indeed, he states that he complied with the order, giving notice "advising every client that Appellant was unable to continue to represent them because of the disciplinary action taken against him. The procedures outlined in Admission and Discipline Rule 23, §26, etc. were followed to the letter". Appellant has failed to raise a substantial federal question by the 7th Question presented by appeal.

Lastly, Appellant claims that it was necessary for the judgment of the Supreme Court of Indiana to be pronounced to him in person. The record of the case below

demonstrates that the judgment was pronounced to him in person. On January 27, 1982, the Appellant received notice of an *Order To Appear for Pronouncement of Sentence* and appeared, on February 11, 1982, for said pronouncement. Appellant infers that it was his constitutional right to be present when the Judges were voting on their decision. Appellant cites no authority for this unusual position and presents no logic to support the same. Appellant has failed to raise a substantial federal question as to this issue.

## CONCLUSION

Appellant has failed to raise any substantial federal questions by his appeal and, therefore, has failed to invoke the jurisdiction of the Supreme Court of the United States. Additionally, Appellant has failed to demonstrate by record or by argument any right to review.

Respectfully submitted,

Sheldon A. Breskow
Executive Secretary,
Indiana Supreme Court
Disciplinary Commission